142 U.S. 661

RECORD, CASE NO. 14017.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 335.

THE UNITED STATES, APPELLANT,

vs.

JOHN R. TANNER.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 14, 1890.

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INDEX.

	Original.	Print.
Petition filed April 22, 1886	1	1
Traverse filed July 8, 1887	4	2
Findings of fact and conclusion of law	5	2
Opinion of the court	6	3
Final judgment	8	4
Application for appeal by defendants and allowance of same	9	4
Certificate	10	5

4172

1 In the Court of Claims.—December term, 1885.

JOHN R. TANNER
v. } No. 14904.
THE UNITED STATES.

I.—*Petition.—Filed April 22, 1886.—J. R.*

To the Honorable the Court of Claims:

The claimant, John R. Tanner, respectfully shows to the honorable court:

The claimant was, on the 18th day of December, 1883, appointed marshal of the United States for the southern district of Illinois, and held that office until suspended therefrom by the President of the United States in the year 1885. During the said term of office as marshal the claimant was required to execute, and did execute, certain warrants of commitment of certain prisoners convicted of offenses against the laws of the United States to the penitentiary of said district. For his services in executing said warrants of commitment the claimant charged the sum of six

2 cents a mile, under that clause of section 829 of the Revised Statutes of the United States, which reads as follows:

"For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others."

The items of the claimant's accounts for service of said warrants of commitment were included in his regular accounts as rendered by him, and were presented in open court in the presence of the District Attorney for said district, and were approved by the court. Notwithstanding the rendition of said accounts, however, and their approval by the court, items of fees thus claimed were disallowed by the First Comptroller of the Treasury, on the ground that there had already been allowed to this claimant the sum of ten cents a mile under the following clause of said section 829: "For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard."

This claimant avers that said disallowances were erroneous and contrary to law. Said disallowances amounted to one hundred and twenty-eight and $\frac{16}{100}$ dollars ($128\frac{16}{100}$).

No other action than aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed

3 from the United States, after allowing all just credits and offsets.

The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant demands judgment for $128.16.

GEORGE A. KING,
Attorney for Claimant.

George A. King, being duly sworn, deposes and says: I am the attorney for the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

GEORGE A. KING.

Subscribed and sworn to before me, this 22d day of April, 1886.

[SEAL.] JOHN RANDOLPH,
Asst Clk. C. C.

4 II.—*General traverse, filed July 8, 1887.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

5 III.—*Findings of fact and conclusion of law.*

Findings of fact.

This case having been heard by the Court of Claims, the court, upon the evidence, find the facts to be as follows:

I. The plaintiff, John R. Tanner, was, in the years 1884 and 1885, marshal of the United States for the southern district of Illinois.

II. As such marshal he rendered to the district court of the United States his account for executing warrants of commitments of certain prisoners to the penitentiary at Chester, Ill.

III. Said district court approved said accounts, amounting to $128.16.

IV. Said accounts were disallowed by the First Comptroller of the Treasury on the following ground:

"In view of the fact that the travel on which the mileage is claimed has already been allowed for as 'transportation' for the deputies who executed the writs, I have to inform you that there is nothing due to you on said account." The allowance for transportation was made as stated by the Comptroller.

V. Prior to about the 1st of October, 1885, it had been the usual practice of United States marshals to charge mileage in their accounts for going to serve writs of commitment within their respective districts 6 cents a mile, in addition to 10 cents a mile each, for transportation of themselves or deputies, prisoners and guards; and such charge when made had been allowed by the accounting officers of the Treasury until the date named, when the practice was changed and such mileage was thereafter not allowed.

VI. The personal compensation of the claimant as marshal, including the amount of this claim, does not exceed that prescribed by section 841 of the Revised Statutes.

6 CONCLUSION OF LAW.

Upon the foregoing facts the court find as conclusion of law that claimant recover the sum of $128.16.

IV.—Opinion.

Davis, J., delivered the opinion of the court:

This is a claim by a marshal for mileage, at 6 cents a mile, earned, it is alleged, in serving warrants of committment of criminals sentenced to imprisonment in the penitentiary. The claim is made under the clause of section 829, Revised Statutes, which provides a fee of 6 cents a mile for "travel, in going only, to serve any process, warrant, attachment, or other writ." The fees have been denied plaintiff, on the ground that 10 cents a mile had already been allowed him under another clause of the same section, which provides a fee of 10 cents a mile for "transporting criminals." Prior to October, 1885, it had been the custom in the Treasury to allow charges such as those now claimed, but about that date the practice was changed, and the fee of 6 cents a mile for travel is no longer allowed.

It appears, then, that for fifteen years the accounting officers consistently construed the statute as authorizing the payment to the marshal of the two fees—one for travel in the service of a warrant of commitment, the other for transporting the criminal named in the warrant. The effect of such long-continued construction has thus been stated by the Supreme Court (*Moore's Case*, 95 U. S. R., 760):

"The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draughtsmen of the laws they are afterwards called upon to interpret."

The rule thus stated is, however, subject to the very material limitation thus formulated by the Supreme Court (*Graham's Case*, 110 U. S. R., 219):

"In Temple's Case it was said the language of the act of 1876 was so clear and explicit as not to be open to construction, and to our minds the same is true of the act of 1835. Under both acts all traveling expenses are to be paid by mileage, and there is not in either of them any indication of an intention of Congress to make a distinction between travel by sea or on land, in foreign countries or in the United States. * * * Such being the case, it matters not what the practice of the Departments may have been or how long continued, for it can only be resorted to in aid of interpretation, and 'it is not allowable to interpret what has no need of interpretation.' If there were ambiguity or doubt, then such a practice, begun so early and continued so long, would be in the highest degree persuasive, if not absolutely controlling, in its effect. But with language clear and precise and with its meaning evident, there is no room for construction, and consequently no need of anything to give it aid." (*Swift, Courtney and Beecher Company's Case*, 105 U. S. R., 691.)

We have, then, first to decide whether the statute is so ambiguous as to require interpretation; if so, the case falls under the decision in Moore's Case, and the plaintiff will recover.

On the one hand the claim for mileage is within the strict letter of the law, for the plaintiff did travel, and he did deliver to the warden of the penitentiary a warrant of commitment. On the other hand travel is a necessary incident of transporting, and it might well be argued that as the greater includes the less, so a larger fee for transporting would
7 include a smaller fee for the travel incident thereto. Service, also, might technically be held to be the delivery of a writ to an individual with intent to compel his appearance in court as defendant or witness against his wish, and not to be the delivery by one officer of the law to another officer of the law of the court's command which both are charged to execute. But the warden of the penitentiary is a State officer, while the marshal is a United States officer, and while both are officers of the law, both are not subject to the same superior.

So it might be contended that Congress would not pay one fee for the complete service of transporting and an additional fee for a portion of that service, the travel incident thereto; but, it might be urged, serving a warrant is not an incident of transporting, but a separate act, for which a fee is fixed by law to be measured by the amount of travel, as there is a specific fee for the commitment of prisoners.

We think enough has been indicated in the line of possible argument to show at least that the statute is open to interpretation, that there is some ambiguity, and the case falls within the principle enounced by the Supreme Court in the case already cited. Therefore, without stating what would be the opinion of this court did the case come here without the long-continued executive interpretation, but placing our decision entirely upon the rulings in Moore's and Graham's cases, judgment will be entered for plaintiff in the sum of $128.16.

8 V.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 9th day of December, A. D. 1889, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said John R. Tanner do have and recover of and from the United States the sum of one hundred and twenty-eight $\frac{16}{100}$ dollars ($128.16).

9 VI.—*Defendants' application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 9th day of Dec'r, 1889, in favor of claimant, the defendants, by their Attorney-General, on the 3rd day of February, 1890, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court Feb'y 3, 1890.

WILLIAM A. RICHARDSON,
Chief Justice.

10 IN THE COURT OF CLAIMS.

VII.

JOHN R. TANNER
vs.
THE UNITED STATES. } No. 14904.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the defendants for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 10th day of April, A. D. 1890.

[SEAL.] JOHN RANDOLPH.
Assistant Clerk Court of Claims.

(Indorsement on cover:) No. 335. The United States, appellant, vs. John R. Tanner. Court of Claims. Filed April 14, 1890.

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Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
JOHN R. TANNER, APPELLEE. } No. 335.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
JOHN R. TANNER, APPELLEE. } No. 335.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

The claimant in the court below was marshal of the United States for the southern district of Illinois during 1884 and 1885.

While holding the office of United States marshal, as aforesaid, he conveyed to the prison at Chester, Ill., certain criminals convicted of offenses against the United States.

For such services he has been paid by the United States the sum to which he is entitled under that clause of section 829 of the Revised Statutes which reads as follows:

> For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard.

In addition to this amount, claim is now made for services under the following clause of the same section of the Revised Statutes:

> For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others.

The First Comptroller refused to allow the latter charge of 6 cents a mile, holding that the fee of 10 cents a mile for himself, each prisoner, and necessary guard is the only compensation for such services provided by law.

The question presented is whether a marshal is entitled to the fees provided by both of the aforesaid clauses of section 829 of the Revised Statutes for transporting criminals after sentence to the prison where they are to serve.

It is insisted that the court below erred in holding that a marshal is entitled to the fees provided by both of said clauses.

ARGUMENT.

The kind of service for which pay is provided in that clause of section 829 upon which the claimant bases his suit, is the serving of original writs in civil or criminal cases, by means of which the defendant or person served is brought under the jurisdiction of the court, the words "process, warrant, attachment, or other writs," clearly indicating writs of subpœna in civil or criminal cases. This meaning is made still clearer by the following words of the same section, viz: "When more than *one person is served therewith*" and the words "adding thereto the extra travel which is necessary to serve it on the *others*."

The object of that clause of the statute is perfectly plain. It is the pay provided for bringing defendants and witnesses into the jurisdiction of the court, and by no kind of reasoning can be made to refer to the transportation of prisoners already convicted and sentenced to prison, for that is a kind of service totally different, and for which pay ample and sufficient has been provided by another clause in the same section. The phrases "more than one person served therewith," and "necesary to serve it on the others," are used with reference to all the kinds of cases described in this paragraph, and it seems impossible to make them applicable to a warrant of commitment, which can scarcely be said to be *served* upon the warden of the prison. It is simply delivered to him and his receipt taken. In any event it can not be served upon more than one person, which fact would seem to exclude the same from the class of writs embraced in this clause.

When the law provides the exact pay for a particular service, it leaves nothing in doubt, and nothing more can be allowed by *implication*, and when the law says that a marshal shall have "for transporting criminals 10 cents a mile for himself and for each prisoner and necessary guard," it is equivalent to saying that he shall have that much and no more. It did not mean 16 cents a mile, and it did not mean that he could increase the compensation so fixed by adding the fees prescribed for an entirely distinct and different kind of service.

The only possible pretext for charging 6 cents a mile in addition to the 30 cents for transportation of himself, prisoner, and necessary guard (the provision being 10 cents for each) is the fact that an order of commitment made by the court is carried to the prison-keeper, which is his authority for receiving the prisoner into his custody. Presenting this order of commitment to the jailer is clearly a very different kind of service from that contemplated by the clause which provides 6 cents a mile "for travel, in going only to *serve* any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases." This appears upon the reading of the two clauses and upon consideration of the difference in the nature of the duty performed. But it is more apparent from the fact that for conveying this order of commitment to the prison-keeper the same section fixes a fee of 50 cents.

The presentation of the order is a necessary part of the commitment for which the fee of 50 cents is provided and has been paid to the claimant. The claimant has thus been paid for his whole service. There is nothing more to be done. He has been paid for the transportation and

for the commitment of the prisoner, and there can be no possible ground for claiming that he is entitled to receive, in addition thereto, the pay provided for bringing defendants and witnesses under the jurisdiction of the court by the service of original writs and subpœnas in civil and criminal cases. The duties are not similar in the one case; the defendant is already in the custody of the court and he is merely transferred from one place to another by order of the court, and for his transportation and delivery to the jailer, a specific service, specific pay is provided by the statute and has been paid to the claimant.

The doctrine that, where the words of a statute fixing the compensation of a public officer are loose and obscure and admit of two meanings, they should be construed in favor of the officer, is not disputed; that law is, of course, well settled; but our contention is that there is no ambiguity whatever in the statute applying to this case; it is clear and explicit.

The court below based its opinion almost entirely upon the long-established practice of the Treasury Department to allow the double mileage claimed, or rather the 30 cents per mile for the marshal for taking a criminal to prison, and 6 cents a mile provided by law for serving original writs and subpœnas in civil and criminal cases, besides the 50 cents commitment fees.

A practice continued by the First Comptroller of the Treasury until 1885 to allow the double mileage can not, we think, affect this case. Practice can not alter a plain law. An error in the interpretation of a law by an administrative officer may continue a long time without a judicial investigation of the subject; but that fact can not

govern the decision of the court; otherwise there would be no remedy for an old error. Wrong would become right by age. If an error has previously prevailed in the interpretation of the law in the case under investigation that fact can not justify its continuance. In support of this position we cite *Greely* v. *Thompson* (10 How., 225); 8 Op. Att'y Gen., 293.

We submit these views with great deference because of the language used by the learned justice who pronounced the opinion in *Harmon* v. *United States* (43 Fed. Rep., 550). The quotation therefrom upon appellee's brief (p. 3) had reference to the question whether the marshal was entitled to fees on more than two writs in his hands at the same time and served at the same place on different persons. It was a question of the amount of travel necessary "to serve precepts." The court also says "the fees charged for transportation of officers and prisoners are in exact accordance with Revised Statutes, section 829, clause 20 (p. 567), which is the clause under which the claimant here has been paid, and not the one upon which he bases his right to recover. There is much in this act showing an intention on the part of Congress to allow the marshal only the actual cost of payments made to others on account of the Government. It was not intended that he should make a profit on his expenditures in behalf of his principal, hence the use of such words as "reasonable actual expense." (Sec. 829, clause 21.) "In all cases where mileage is allowed to the marshal, he may elect to receive the same or his actual traveling expenses, to be proved on his oath to the satisfaction of the court." (Sec. 829, clause 26.) "Also for his reasonable actual ex-

pense for the transportation of criminals * * * as hereinbefore provided." * * * "His expenses necessarily incurred for fuel, lights." * * * (Sec. 830.)

Where there is a service connected with the expense a profit is allowed or a particular fee provided; *e. g.*, it is well known that it is does not cost the officer to exceed 3 cents per mile to transport the prisoner, guard, and himself.

There is a risk and duty connected therewith and the law has allowed a premium or excess. The prisoner could not be transported without travel, and where the law provided a recompense for the completed act it should be held to include all the steps going to constitute the completed act. The whole should embrace the parts composing it. It does not appear that the attention of Mr. Justice Gray was called to these considerations, or the fact, as we believe, that clause 25 refers to original process and has no reference to a new order of the kind in question, *which is not "returned," as required by clause 25, but is retained by the warden as evidence of his authority to detain the prisoner, and is therefore not within the description of that clause.*

This is a test case, and large amounts are dependent upon the decision herein, which must be our excuse, if any is required, for so earnestly pressing our views upon the court.

It is respectfully submitted that the judgment of the court below should be reversed.

JAMES H. NIXON,
Assistant Attorney.

CHARLES H. ALDRICH,
Solicitor-General.

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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 335.

THE UNITED STATES, Appellant,

v.

JOHN R. TANNER.

BRIEF FOR APPELLEE.

GEORGE A. KING,
Attorney for Appellee.

PRESS OF H. L. McQUEEN, WASHINGTON.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, Appellant,
v.
JOHN R. TANNER. } No. 335.

BRIEF FOR APPELLEE.

I. Statement of the Case.

The claimant, John R. Tanner, was in 1884 and 1885 marshal of the United States for the southern district of Illinois. (Record, Finding I, p. 2.)

As such marshal he rendered to the District Court of the United States his accounts for executing warrants of commitment of certain prisoners to the penitentiary at Chester, Illinois, which were approved by the court to the amount of $128.16. (Findings II, III, p. 2.)

The claim was made under that clause of §829 of the Revised Statutes of the United States, which, under the heading of "Marshals' Fees," allows the following:

"For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place

of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others."

The First Comptroller, however, disallowed the accounts on the ground that the claimant had already received an allowance of ten cents a mile as transportation for the deputies who executed the writs, under the following clause of the same section:

"For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard." (Finding IV, p. 2.)

The only question, therefore, is whether a marshal serving a writ of commitment of a convict to the penitentiary is debarred from charging mileage for that service by the fact that he also gets another allowance for "transportation" for the same service.

This charge, prior to October 1, 1885, had been uniformly made by marshals and allowed by the accounting officers of the Treasury, and it was only on that date that the practice was changed. (Finding V, p. 2.)

The present suit was instituted in the Court of Claims on the 22d of April, 1886 (p. 1), about six months after the practice had been so changed.

II. Brief of Argument.

The same question involved in this case came before the Circuit Court of the United States for the District of Maine, held by Mr. Justice Gray and Judge Colt, in *Harmon* v. *United States*, 43 Fed. Rep. 560, decided September 23, 1890, where, among other items charged by the marshal, was one (p. 562, item 6) thus stated:

"In serving a warrant of removal (in every instance within this district) or warrant to commit, the marshal

has charged travel, while the Comptroller claims that transportation of officer and prisoner being allowed, no travel can be charged."

The decision of the court on that item was stated as follows (p. 566):

"The general rule prescribed by Rev. Stat. §829, cl. 25, allows the marshal 'for travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service.' The explanatory or restrictive provisions as to the cases of two persons served with the same precept, and of more than two writs in behalf of the same party against the same person, emphasize the general rule, and confirm its application to several precepts against different persons for different causes, although served at the same time.

"This clause of the fee-bill, which allows for travel in going only, as a compensation for actual travel in both going and returning, is wholly independent of, and unaffected by, the distinct clause allowing fees for transportation of officer and prisoner, only while the officer has the prisoner in custody, and without regard to any additional distance which he may be obliged to travel out and back in serving the warrant of arrest or removal."

This view is fortified by considering that the marshal, after all, gets only one allowance for the same journey for the round trip. His transportation was charged for the deputies and the prisoner only one way, and after executing the writ the marshal or his deputy was obliged to return to Springfield, the place of holding court, over the same road. The charge, therefore, of 10 cents one way and 6 cents the other, only results in giving the marshal 16 cents a mile for the entire distance between the two places, or at the rate of 8 cents a mile for each mile of the round trip. That this sum is not re-

garded by Congress as excessive is shown by the fact that this is the precise amount allowed to officers of the Navy by the act of June 30, 1876, 1 Supplement to Revised Statutes, 2d ed. p. 109, ch. 159, par. 1, which provides that—

"The sum of eight cents per mile shall be allowed such officers while so engaged, in lieu of their actual expenses."

And the same provision is made as to the Army by act of July 24, 1876, 1 Supplement to Revised Statutes, 2d ed. p. 113, ch. 226, § 2, which provides—

"That when any officer travels under orders, and is not furnished transportation by the Quartermaster's Department, or on a conveyance belonging to or chartered by the United States, or on any railroad on which the troops and supplies of the United States are entitled to be transported free of charge he shall be allowed eight cents a mile, and no more, for each mile actually traveled under such order, distances to be calculated by the shortest usually traveled route; and so much of § 1273 of the Revised Statutes, or of any act as conflicts with the provisions of this section, is hereby repealed."

Neither of these acts requires, as in the case of marshals, that the mileage shall be charged one way only, so that in effect the mileage thus allowed officers of the Army and Navy is the same as the total allowance now claimed in behalf of the marshal, viz. 8 cents a mile each way, or 16 cents a mile computing the travel one way only.

In the Harmon case above cited, the court considered, p. 567, "the objections taken to the greater part of the petitioner's claim" to be so "frivolous and vexatious" that he was also allowed costs in the exercise of the discretion conferred by law. The case therefore is an em-

phatic opinion in favor of the right to charge the very fees now claimed.

And even were the case less plain, it is an established rule that "where the words of a statute prescribing compensation to a public officer are loose and obscure, and admit of two interpretations, they should be construed in favor of the officer." *United States* v. *Morse*, 3 Story, 87.

The Court of Claims based its opinion favorable to the claim upon a slightly different ground, viz. that the contemporaneous construction of the statute was such as to prevent its being now overturned by new construction except upon a legislative declaration to that effect.

The two clauses of § 829 of the Revised Statutes now relied upon formed a portion of the original fee-bill of February 26, 1853, 10 Stat. 161, 164, 165. Up to October 1, 1885, this charge was uniformly made and allowed. There would therefore appear to have been thirty-two years, or about one generation, of practical construction of this language in favor of the right to charge these fees.

It would be difficult, to assign an intelligible reason for now setting aside this long-continued construction without legislative authority to that effect. To do so would enable the Government to go back and charge marshals for many years prior to 1885 with all payments made to them in accordance with the rulings which prevailed up to that date, but were then for the first time set aside. To do this would be in contravention of the well-settled rule established by this court in a large number of cases involving the question. *United States* v. *Moore*, 95 U. S. 760, 763; *United States* v. *Pugh*, 99 U. S. 265, 269; *Hahn* v. *United States*, 107 U. S. 402, 406; *Brown* v. *United States*, 113 U. S. 568, 571; *United States* v. *Hill*, 120 U. S. 169, 182, 183; *United States* v. *Alabama R. R. Co.* 142 U. S. 615, 621.

As forcibly said in *United States* v. *Philbrick*, 120 U. S.

52, 59, "A contemporaneous construction by the officers upon whom was imposed the duty of executing those statutes is entitled to great weight; and since *it is not clear that that construction was erroneous*, it ought not now to be overturned."

In every view of the case, therefore, the judgment of the Court of Claims ought to be affirmed.

GEORGE A. KING,
Attorney for Appellee.